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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No. SA CR 08-251-DOC
	)	
Plaintiff,	)	<u>EX PARTE APPLICATION FOR AN</u>
	)	<u>ORDER PERMITTING RELEASE OF</u>
v.	)	<u>GRAND JURY TRANSCRIPTS;</u>
	)	<u>MEMORANDUM OF POINTS AND</u>
TAN DUC NGUYEN,	)	<u>AUTHORITIES; DECLARATION OF</u>
	)	<u>JENNIFER L. WAIER</u>
Defendant.	)	
	)	
	)	
	)	

Plaintiff United States of America, through its attorney of record, the United States Attorney's Office for the Central District of California, hereby respectfully applies ex parte for an order pursuant to Federal Rule of Criminal Procedure 6(e), authorizing the government to provide defendant's counsel with copies of the grand jury testimony of witnesses whom the government may call at trial.

1 This application is necessitated by the disclosure  
2 provisions of the Jencks Act, 18 U.S.C. § 3500, and is based upon  
3 the attached memorandum of points and authorities, the  
4 declaration of Jennifer L. Waier, the files and records of this  
5 case, and on such other evidence as may be presented at any  
6 hearing on this application.

7 Dated: January 14, 2010

8 Respectfully submitted,  
9 GEORGE S. CARDONA  
Acting United States Attorney

10 ROBB C. ADKINS  
11 Assistant United States Attorney  
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12 Jennifer L. Waier  
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## MEMORANDUM OF POINTS AND AUTHORITIES

Rule 6(e) of the Federal Rules of Criminal Procedure provides in pertinent part that:

[A]n attorney for the government . . . shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules . . . . Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may . . . be made -

(i) when so directed by a court preliminarily to or in connection with a judicial proceeding . . . .

The Court's power to order disclosure is discretionary and may be exercised upon a showing of need and a finding that disclosure is required by the ends of justice. In re William H. Pflaumer & Sons, Inc., 53 F.R.D. 464, 470 (E.D.Pa. 1971); see United States v. Procter & Gamble Co., 356 U.S. 677, 682 (1958).

In U.S. Industries, Inc. v. United States District Court, 345 F.2d 18 (9th Cir. 1965), the Ninth Circuit observed that disclosure should be liberally allowed when the traditional policies underlying grand jury secrecy are no longer served. The court held that when the reasons for the policy of secrecy "do not apply at all in a given situation, or apply to only an insignificant degree, the party seeking disclosures should not be required to demonstrate a large compelling need." *Id.* at 21.

The Ninth Circuit listed five policy considerations underlying the need for grand jury secrecy:

1 (1) to prevent the escape of those whose indictment may  
2 be contemplated; (2) to insure the utmost freedom to  
3 the grand jury in its deliberations, and to prevent  
4 persons subject to indictment or their friends from  
5 importuning the grand jurors; (3) to prevent  
6 subornation of perjury or tampering with the witnesses  
7 who may testify before the grand jury and later appear  
8 at the trial of those indicted by it; (4) to encourage  
9 free and untrammelled disclosures by persons who have  
10 information with respect to the commission of crimes;  
11 (5) to protect the innocent accused who is exonerated  
12 from disclosures of the fact that he has been under  
13 investigation, and from the expense of standing trial  
14 where there was no probability of guilt.

15 Id. at 22 (quoting United States v. Amazon Ind. Chem. Corp., 55  
16 F.2d 254 (D. Md. 1931)); accord Procter & Gamble Co., 356 U.S. at  
17 681-82 n. 6.

18 In this case, the policy considerations requiring secrecy  
19 are inapplicable or apply, if at all, with little force. The  
20 case has already been indicted. See In re William H. Pflaumer &  
21 Sons, Inc., 53 F.R.D. at 470 (stating that "once a grand jury has  
22 concluded its work, the courts have, to some degree, relaxed the  
23 secrecy principle"). Disclosing the testimony of the witness  
24 before the grand jury, a government agent, does not implicate the  
25 other policy concerns in this case. Moreover, disclosure of the  
26 grand jury testimony is in the interest of justice because it

1 will permit defendant's counsel to have Jencks material in  
2 advance of trial pursuant to 18 U.S.C. § 3500.

3 Accordingly, the government moves this Court to issue an  
4 order authorizing the government to provide defendant's counsel  
5 with copies of the grand jury testimony of witnesses the  
6 government may call at trial.